IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 70 of 2003.

Decided on: 19.4.2007.

Durma Devi

… … … Petitioner.

Versus

State of H.P. & ors.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the Petitioner: **Mr. Ajay Mohan Goel, Advocate.**

For the Respondents: **Mr. M.S. Chandel, Advocate General with Mr. Ashutosh Burathoki, Addl. Advocate General and Ms. Meenakshi Sharma, Deputy Advocate General.**

Rajiv Sharma, Judge :

By way of this petition the petitioner has sought declaration from this Court to the effect that the orders dated 6.8.2002 and 27.9.2002 issued by respondent No.2 are illegal.

The brief facts necessary for adjudication of this petition are that the ancestors of the petitioner and thereafter her father and mother were non-occupancy tenants on the land comprised in Mauza Jungle Paul, Pargana Dharaunk Khata Number 1 min/14 Khasra No.5/1 measuring 15-5 bighas.

Whether reporters of local papers may be allowed to see the judgment? Yes.

The proprietary rights were conferred on the mother and other widow after the death of father on 26.6.1976 by Assistant Collector Grade-II and accordingly mutation to this effect was attested in here favour vide mutation No.19 **(Annexure P-1).** The proprietary rights have been conferred as per Section 104 (3) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the "Act").

An amendment was carried out in Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 by the Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 whereby proviso to sub-section (9) of Section 104 of the Act was added to the following effect: -

> **"Provided that nothing contained in this section shall apply to such land which is either owned by or is vested in the Government under any law, whether before or after the commencement of this Act, and is leased out to any person."**

The statement of objects and reasons necessitating the amendment are also reproduced below for better appreciation of the issue involved in this petition as under:-

> **"Under the existing provisions contained in the Himachal Pradesh Tenancy and Land Reforms Act, 1972, the right, title and interest of the Government in the lands owned by it and leased out to a person vest in tenants. It is imperative that the proprietary rights in Government lands by and large regenerated through public funds, should not pass to private persons. It has, therefore, become necessary to make suitable amendment in section 104 of the said Act.**

Under the proviso to section 113 of the said Act, the land in respect of which proprietary rights have been acquired by a non-occupancy tenant, can be transferred by the way of sale, mortgage, gift or otherwise only for productive purposes with the permission of the Collector. In order to avoid misuse of this provision and to ensure that such permission should be accorded rarely and only under genuine circumstances, it has been decided that the said permission be given by the State Government alone.

Section 118 of the principal Act, which restricts transfer of land to non-agriculturists, does not apply to the transfer of lands situate in urban areas, nor does it apply to transfer of lands and used for purpose subservient to agriculture. The lands classified as "Gair-mumkin makan" "Gair-mumkin dhank" can be transferred in favour of non-agriculturists and thus the provisions as they exist leave a loophole in law which is designed to prevent the transfer of land to non-agriculturists."

It appears from the pleadings that a direction was issued by the Deputy Commissioner, Shimla dated 6th August, 2002 to the Sub Divisional Officer (Civil), Theog to review mutations keeping in view the amended provisions of the Act. Respondent No.2, i.e. Deputy Commissioner, Shimla has also issued letter to Divisional Forest Officer, Forest Division, Theog on 27.9.2002 whereby the directions issued on 28th December, 2000 were further clarified as under: -

"1. The section 104 of the H.P. Tenancy and Land Reforms Act, 1972 has been amended vide section 2

of the H.P. Tenancy and Land Reforms (Amendment) Act, 1987 Act No.6 of 1988,wherein following proviso has been added at the end of sub-section (9).

> ***"Provided that nothing contained in this section shall apply to such land which is either owned by or is vested in the Govt. Under any law, whether before or after the commencement of this Act and is leased out to any person."***

2. As per section 1(3) of the H.P. Tenancy and Land Reforms (Amendment) Act, 1987 Act No.6 of 1988 the amended provisions in respect of section 104 of HPTLRA 1972 has been made operative from the date of commencement of the Act, i.e. 21.2.1974.

3. This issue has also been clarified and settled by the Hon'ble High Court of H.P. in Devi Chand vs State reported in SLJ 94(4) 2926 which has cleanly held that :-

> ***"Bare reading of sub section (3) of section 1 of the amendment Act makes it clear that in so far as section 2 of the amendment Act is concerned, the same shall be deemed to have come into force from the date of commencement of the Act (Act No.8 of 1974), namely, 21st February, 1974. In other words, the proviso added towards the end of sub section (9) of section-104 shall be deemed to have always existed in the Act. Section 2 of the Amendment Act, by virtue of sub section (3) of section 1 shall be deemed to have come into force on the date of commencement of the Act. Reading of the proviso makes the intention of the Legislature clear that in so far as the land, which is either owned or is vested in the state Govt. under any law, nothing contained in section-104 shall apply thereto, whether before or after the commencement of the Act. Thus the Government lands leased out to any person have been exempted from the***

operation of section 104 of the Act and thus there is no question of the applicability of Rule-27 of the Rules to such of the lands, which are either owned or vested in the State Govt. and have been leased out to any person."

You are therefore requested to deal with such cases in the light of the judgment of the Hon'ble High Court of H.P. and the provisions explained in the FCA 1980. The copies of the Amendment Act, 1987 and Judgment of the Hon'ble High Court of H.P. as reported in SLJ 94 (4) 2926 are enclosed herewith for information and necessary action. The appellants may also be informed accordingly."

In sequel to letter dated 6th August, 2002 and 27th September, 2002 the Sub Divisional Officer (Civil),Theog has sent a letter to the Tehsildar on 22.10.2002 requesting him to review all mutations as per the orders of Deputy Commissioner, Shimla keeping in view the provisions of the Act (Amendment, 1987).

I have perused the record and heard the parties.

Mr. Ajay Goel appearing on behalf of the petitioner has submitted that the proviso added to after

sub-section (9) of Section 104 of the Act cannot be applied retrospectively w.e.f. 21.2.1974 by destroying the accrued and vested rights of the petitioner. Mr. Ajay Goel further contends that the rights of the petitioner have crystallized when they were conferred proprietary rights in the year 1976 and the issuance of communications like letter dated 6.8.2002 and 27.9.2002 (Annexure P-2) and (Annexure P-3) dated 22.10.2002 are illegal.

Learned Advocate General on the other hand has supported the proviso added to the Himachal Pradesh Tenancy and Land Reforms Act by way of Himachal Pradesh Tenancy and Land Reforms (Amended) Act, 1987. Mr. Advocate General contends that since the amendment will apply retrospectively w.e.f. 21.2.1974, the issuance of consequential letters dated 6.8.2002, 27.2.2002 and 22.10.2002 are legal and are to be enforced as such.

Mr. M.S. Chandel has relied upon the judgment of this Court in **Devi Chand versus State** reported in **1994 (4) S.L.J.2926.** Mr. Ajay Goel has placed reliance on **"Dinesh Kumar v. State of H.P. 1994 (Suppl.) Sim. L.C. 385.**

This Court has held in Devi Chand's case that the proviso added towards the end of sub-section (9) of Section 104 of the Act shall be deemed to have come into force on the date when the Act became operative. Hon'ble Mr. Justice Devinder Gupta has held as under:-

> **"The aforementioned decisions also elaborate the proposition that retrospective operation is not taken to be intended unless that intention is manifest by express words or necessary implication. Now in case, reference is made to the proviso added towards the end of sub-section (9) of Section 104 of the Act, in the light of the language used, sub-section (3) of Section 1 of the amendment Act; which says that the same shall be deemed to have come into force on the date when the Act became operative; and that if the proviso which states that nothing contained in Section 104 shall apply to any land owned or vested in the State Government, either before or after the commencement of the Act, there is no escape in concluding that the intention of the State**

Legislature is manifest by express words that the amendment carried out to Section 104 of the Act shall have retrospective effect. In other words, the proviso added towards the end of sub-section (9) shall be deemed to be have always existed in Section 104 of the Act.

This judgment was rendered by Hon'ble Single Judge on 23rd March, 1994.

Hon'ble Miss. Justice Kamlesh Sharma has held in **1994 (Suppl.) Sim. L. C. 385 Dinesh Kumar v. State of H.P.** that the amendment carried out in the year 1987 will apply prospectively. Hon'ble Ms. Justice Kamlesh Sharma has held as under: -

"The proviso to sub-section (9) of section 104 of the Act is as under:-

"Provided that nothing contained in this section shall apply to such land which is either owned by or is vested in the Government under law, whether before or after the commencement of the Act, and is leased out to any person."

Sub-section (3) of section 1 of the Amendment Act of 1987 provides that the proviso in question shall be deemed to have come into force from the date of commencement of the Act. The precise argument of Sh. Kuldip Singh, learned Counsel for the appellants is that though the proviso in question has been given retrospective effect, yet, from its plain language it is clear that the Legislature had no intention to take away the vested rights of the persons on whom proprietary rights stood conferred and mutations thereof were duly attested in accordance with law and they have further transferred the lands in favour of other persons whereby rights of

other persons have also come into existence. According to him, had the Legislature intended to put the clock back and take away the vested rights, they would have provided in the proviso itself. He has also supplemented his argument by saying that the proviso applies to only those leases which were created after the coming into force of the Act as all those who were tenants of Government land on the date of commencement of this Act, had acquired proprietary rights automatically and attestation of mutation in their favour was only a ministerial act.

On the other hand, Sh. C.L. Sharma, learned Additional Advocate General, has supported the impugned decrees and judgments and has submitted that since the proviso is deemed to have come into operation from the commencement of the Act, proprietary rights on Government land could not be conferred on the tenants thereof. As such, all the mutations attested in this regard from 21-2-1974 to 14-4-1988 were null and void and all the vested rights accruing from them were taken away. According to Sh. Sharma, by giving retrospective effect to the proviso in question, the vested rights of all the persons accrued by virtue of the original provision of section 104 of the Act have been taken away impliedly.

By now, it is well-settled rule of interpretation, sanctified by judicial decisions, that unless the term of the statute expressly so provides or necessarily requires it, retrospective operation should not be given to it so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards the matter of procedure. The general rule, as stated by Halsbury in Volume 36 of the Laws of England (3rd Edition) and reiterated in several decisions of the Supreme Court of India as well as English Courts is that:

> **"All statutes other than those which were merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective…."**

and retrospective operation should not be given to a statute so as to affect, alter or destroy any existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. Further, there cannot be any dispute that the Legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result and this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens, the provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights, which, but for such operation, would have continued undisturbed. In nut-shell, the well recognized rule is that a statute should be interpreted, if possible, so as to respect vested rights and such a construction should not be adopted if the words are open to another construction.

Applying the above stated principles of interpretation of Statutes to the proviso in question, it is clear that though it is not declaratory or procedural, yet, it has been given retrospective effect. The Legislature intended that it should be read in section 104 of the Act from the date of commencement thereof. Therefore, there is no doubt that the proviso in question has been made retrospective expressly. The real question is whether the

legislature intended to take away the vested substantial rights which had accrued to those in whose favour proprietary rights stood conferred and mutations thereof attested and they had made further transfers resulting in creation of further substantial rights in favour of other persons. In other words, this Court is to examine from the language used in the proviso in question to what extent retrospectivity was intended by the Legislature.

The objects and reasons given at the time of introducing the bill, which lateron became the Amendment Act of 1987, may be of some assistance. These are:-

> **"Under the existing provisions, contained in H.P. Tenancy and Land Reforms Act, 1972, the right, title and interest of the Government in the lands owned by it and leased out to a person vests in tenants. It is imperative that the proprietary rights in Government lands by and large regenerated through public funds, should not pass to private persons. It has, therefore, become necessary to make suitable amendments in section 104 of the said Act."**

From the "Statement of Objects and Reasons, it appears that it was not in the mind of the Legislature to put the clock back to the date of commencement of the Act and take away the substantial rights vested in the tenants of the Government land from the date of commencement of the Act to the date of promulgation of the Amendment Act of 1987. Nothing has been said in respect of necessity of giving retrospective effect to the proviso in question. Reading the proviso in question in the backdrop of Objects and Reasons, it is clear that the retrospectivity has been given only in respect of those lands of the Government which continue to be under the

lease and in respect of which proprietary rights had not been conferred in between 21-2-1974 and 14-4-1988. though the word 'lease' has not been defined in the principal Act but looking to the definition given under section 105 of the Transfer of Property Act, though under section 117 thereof agricultural lands are exempt from the provisions of Chapter V of that Act, it seems that the word 'lease' has been used synonymous to the word 'tenancy' as defined in Clause (18) of section 2 of the Act. It is:-

> **" 'tenancy' means a parcel of land held by a tenant of land owner under one lease or one set of conditions."**

The proviso in question applied to the leases in existence on the date it stood promulgated and so far retrospectivity is concerned, it is given to the extent that these leases might be created before the coming into force of the Act or thereafter. The tenants over the land belonging to the Government cannot claim proprietary rights under section 104 of the Act on the ground that since their tenancy/lease was created before the proviso in question was added, they had already acquired proprietary rights which were not affected by the proviso in question. In view of this interpretation, this Court does not find any substance in the argument of Sh. Kuldip Singh, learned Counsel for the appellants, that the proviso in question applies only to lease, created after the coming into force of the Act. Therefore, in the absence of any specific provision incorporated in the proviso in question for taking away the substantial rights which vested during the period from 21-2-1974 to 14-4-1988 on the tenants/lessees and on others by virtue of legal transfers made by them, the only interpretation possible of the proviso in question is that, by its retrospectivity, it does not take away the rights of those

tenants who have been conferred proprietary rights and mutations have been attested in their favour and those persons who have got the said land by way of transfer."

The proprietary rights have been conferred upon the petitioner on the basis of un-amended Act on 26.6.1976. The mutation was also attested in favour of the petitioner after the proprietary rights were conferred on them. The conferment of proprietary rights as per the un-amended Act was a valuable right on the basis of which the petitioner has started enjoying their rights over her property. The petitioner has enjoyed the accrued rights w.e.f. 26.6.1976 till the issuance of impugned orders on the basis of which the authorities have been directed to review the mutations attested in her favour. It is cardinal principle of law that settled things should not be un-settled. The consistency in law is also one of the well entrenched maxims of the rule of law. Once the parties on the basis of an enactment have been permitted to enjoy the rights, the same cannot be destroyed by applying the law retrospectively. It is evident from the language employed in the proviso added by way of amendment that the same was not to be given retrospectively effect. The retrospectivity cannot be gathered even by way of implication. The general presumption is that the statute cannot be construed to have retrospective operation unless such a construction appears very clearly in terms of the Act, or by necessary implication.

The general presumption is stated in **Maxwell on The Interpretation of Statutes** in the following terms:-

"It is a fundamental rule of English law that no statute shall be construed to have a retrospective

operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

One of the most well-known statements of the rule regarding retrospectivity is contained in this passage from the judgment of R.S. Wright J. in Re Athlumney: "Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." The rule has, in fact, two aspects, for it "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. (Maxwell on The Interpretation of Statutes, Twelfth Edition, 1969, page 215)."

I may also refer to **Francis Bennion Statutory Interpretation 1984 Edn. page 443** wherein the learned author commented as follows:-

"Unless the contrary intention appears, an enactment is presumed not to be intended to have a retrospective operation.

The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws.

If we do something today, we feel that the law applying to it should be the law in force today, not

tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post facto law is enshrined in the United States Constitution and in the constitutions of many American states, which forbid it.

The true principle is that lex prospicit non respicit (law looks forward not back). {Jenk Cent 284, See also 2 Co Inst 292.} As Wills J said, retrospective legislation is-

'… contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.'

{Phillips v Eyre (1870) LR 6 QB 1, at p 23. See also Re Athlumney, ex p Wilson [1898] 2 QB 547.}"

Similarly, the principles whether the Act is to be construed to be applicable retrospectively or not, has been elucidated in **Craies on Statute Law 7th Edition** as under:-

"So careful are the courts in endeavouring to protect vested rights that we find that in several cases judges have refused to allow statutes to have a retrospective operation, although their language seemed to imply that such was the intention of the legislature, because, if the statutes had been so construed, vested rights would have been defeated."

Hon'ble Supreme Court in **Hitendra Vishnu Thakur and others versus State of Maharashtra and others (1994) 4 SCC 602** has laid down the principles with regard to the ambit and scope of a amending Act and its retrospective operation. Your Lordships have held as under:-

"From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) **A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.**

(ii) **Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.**

(iii) **Every litigant has a vested right in substantive law but no such right exists in procedural law.**

(iv) **A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.**

(v) **A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise**

provided, either expressly or by necessary implication."

Hon'ble Supreme Court in **Land Acquisition Officer-cum-DSWO, A.P. versus B.V. Reddy and Sons (2002) 3 SCC 463** has held that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. Your Lordships have held as under:-

"Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984. Under the amendment in question, the provisions of Section 23(2) dealing with solatium were amended and Section 30(2) of the amended Act provided that the provisions of sub-section (2) of Section 23 of the principal Act as amended by clause (b) of Section 15 shall apply and shall be deemed to have applied, also to and in relation to any award made by the Collector or court or to any order passed by the High Court or the Supreme Court in appeal against any such award under the provisions of the principal Act, after 30-4-1982 and before the commencement of the Act. It is because of the aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court

in the Constitution Bench decision in *Union of India v. Raghubir Singh.* Sub-section (2) of Section 30 has at all no reference to the provisions of Section 25 of the Act. In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act."

Hon'ble Supreme Court in **"Zile Singh versus State of Haryana and Others (2004) 8 SCC 1** has laid down that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. Your Lordships have opined as under:-

"It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only – "*nova constitution futuris formam imponere debet non praeteritis"* – a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p.438) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged

evil for the benefit of the community as a whole (ibid., p. 440).”

The question such as the nature of the amendment, i.e. whether it is at all retrospective in operation of not, has been considered by Hon’ble Supreme Court in **S.L. Srinivasa Jute Twine Mills (P) Ltd. Versus Union of India and Another (2006) 2 SCC 740.** Your Lordships of Supreme Court have opined as under:-

“It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See Kesharan Madhava Menon v. State of Bombay.) But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only *nova constitution futuris formam imponere debet, non praeteritis.* In the words of Lord Blanesburgh,

“provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment” (see Delhi Cloth & General Mills Co. Ltd. V. CIT, AIR p.244).

“Every statute, it has been said”, observed Lopes, L.J.’

“which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed

to be intended not to have a retrospective effect." (See Amireddi Rajagopala Rao v. Amireddi Sitharamamma.)

As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid.) In other words, close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghubir Singh.) The above position has been highlighted in Principles of Statutory Interpretation by Justice G.P. Singh (10th Edn., 2006 at pp. 474 and 475.)"

Similarly, Hon'ble Supreme Court in **MRF Ltd., Kottayam versus Asstt. Commissioner (Assessment) Sales Tax and Others (2006) 8 SCC 702** has made pertinent observations with regard to applicability of Amendment Act retrospectively as under:-

"In the aforesaid case, the Employees' Provident Funds Act (as amended in 1988) provided that the Act would not apply "to a newly set-up establishment for a period of three years from the date on which such establishment is set up". Section 16(1)(d) was deleted by the amending Act w.e.f. 22-9-1997 and the question was whether the initial exemption from application of the Act would continue for the full period of three years from the

date of its establishment, even beyond 22-9-1977. Rejecting the contention, as pointed out earlier, it was held that retrospective operation is not taken to be intended unless that intention of the legislature is projected by express words or necessary implication. Setting aside the order of the High Court it was held: (SCC pp.746-47, paras 18 & 20)

"18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. ***(See Keshavan Madhava Menon v. State of Bombay.)*** **But the rule is general is applicable where the object of the statue is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only nova** ***constitution futuris formam imponere debet, non praeteritis.*** **In the words of Lord Blanesburgh,**

> **'provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment' (see Delhi Cloth & General Mills Co. Ltd. V. CIT, AIR p. 244).**

'Every statute, it has been said', observed Lopes, L.J.,

> **'which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect'. (See Amireddi Rajagopala Rao v. Amireddi Sitharamamma.)**

> **As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid.) In other words, close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghubir Singh.) The above position has been highlighted in Principles of Statutory Interpretation by Justice G.P. Singh (10th Edn., 2006 at pp. 474 and 475.)"**
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> **20. Above being the legal position, the judgments of the High Court are indefensible and are set aside. The appellants shall be entitled to the protection as had accrued to them prior to the amendment in 1997 for the period of 3 years starting from the date the establishment was set up irrespective of repeal of the provision for such infancy protection."**

The law laid down by this Court in **Dinesh Kumar versus State of H.P.** is in consonance with the law laid down by the Hon'ble Supreme Court governing the principles that no retrospectivity should be given to the law impairing the accrued rights of the parties. Consequently, I am pursuaded to follow the law laid down by this Court in **Dinesh Kumar versus State of H.P.**

I am of the view that the proviso added to after sub-section (9) of Section 104 of H.P. Tenancy and Land Reforms Act, 1972 cannot be given retrospective effect. It is reiterated that the petitioner's vested rights to

enjoy her property cannot be permitted to be destroyed by applying the proviso retrospectively. The proviso has not been expressly made to have retrospective operation. The retrospectivity cannot be gathered even by necessary implication.

Accordingly, this petition is allowed. The letters dated 6.8.2002, Annexure P-2 dated 27.9.2002 and Annexure P-3 dated 22.10.2002 are quashed and set aside. A mandamus is issued to the respondents not to interfere with the vested rights of the petitioner acquired under the unamended H.P. Tenancy and Land Reforms Act, 1972. There shall be no order as to costs.

(Rajiv Sharma)
Judge

April 19, 2007.
(sck)